IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3133 OF 2006

Shri S.K. Gandhi & Ors. ...Applicants

Vs.

M/s.Lubrizol India Ltd. & Anr. ...Respondents

Shri Prakash Naik for the Applicants.
Shri Rajesh More, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : AUGUST 30, 2006.

P.C.:

1. Heard Shri Naik, learned Counsel appearing for the Applicants. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 is to the Judgment and Order dated 28th June, 2006 passed by the learned Additional Sessions Judge, Mumbai. By the said order, the learned Judge has rejected a Revision Application preferred by the Applicants, inter alia, on the ground that there was no explanation for inordinate delay of more than nine years. By the said Revision Application, the Applicants had challenged order dated 05th February, 1997 passed by the learned Judicial Magistrate issuing process on the private complaint filed by the first Respondent.

2. Shri Naik, learned counsel appearing for the Applicants submitted that a clear explanation for delay of nine years was given by the Applicants in the Revision Application. He pointed out that various proceedings were filed from time to time by the Applicants and there was no negligence on the part of the Applicants. He submitted that considering the peculiar facts of the case, delay ought to have been condoned by the Sessions Court and Revision Application ought to have been heard on merits. He pointed out that Revision Application has been rejected even on merits.

3. I have considered the submissions. The learned Magistrate issued process on 05th February, 1997. On 07th April, 1997 Application for discharge was made by the Applicants which was rejected on 20th December, 2004. The said order was challenged by the Applicants by filing Criminal Application No.1093 of 2005. The said Application was withdrawn and criminal Writ Petition No.2623 of 2005 was filed on various grounds for quashing the proceedings of the complaint. The said Writ Petition alongwith other companion Petitions filed by the Applicants were rejected by this court by Judgment and Order dated 28th February, 2006. While

rejecting the Writ Petition the learned single Judge of this court observed thus:

> "9. It may also be mentioned that in all these petitions, earlier attempts were made to quash the prosecutions and points were taken peacemeal. In some of the matters attempt was made to quash the 138 proceedings on the footing that the winding up petitions had been presented. This challenge was negatived by this Court and while dismissing of such petitions by reasoned order, reliance was placed on the judgment in Pankaj Mehra's case. Subsequently an attempt was made to quash the proceedings on the ground that there was no proper averments in the complaint. This court dismissed those petitions with liberty to file a revision in the Sessions Court in some of the cases but that order has not been challenged. In any case, the point of lack of averments has not been raised in this petition."

4. The learned Additional Sessions Judge while passing the impugned order has observed thus:

"15. In the case at hand, the Applicants immediately after their appearance in Lower Court challenged their prosecution by preferring application for discharge and the application came to be rejected on 20.12.04. The order was challenged in W.P.No.2632 of 2005 before the Hon'ble High Court. However, subsequently, it was withdrawn. Another Writ Petition was preferred before Hon'ble High Court which was dismissed on 28.2.06.

16. The Applicants are not laymen. Since beginning they were aware of the order. They took a period of nearly 10 years to challenge the order. The fact that some time was spent in fighting the litigation before the Hon'ble High Court cannot come to their rescue. It is not acceptable that for a period of more than 9 years it did not occur to them that the order of issue process should be challenged or that they forgot to take any steps to prefer revision. In the parallel proceedings referred above, indirectly the order was under challenge."

5. The Revision Application was filed in the year 2006 for challenging an order passed on 05th February, 1997. The learned Additional Sessions Judge has also noted that the plea of the Applicants has been recorded by the learned Magistrate on 02nd March, 2006 and the trial has commenced and infact the complainant is under cross-examination.

6. I find no fault in the view taken by the learned Additional Sessions Judge. There is no merit in the Application and the same is rejected.

JUDGE